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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,040	12/30/2003	Michael Allan Burleson	03 PAT 198	8270
27645	7590	07/26/2005	EXAMINER	
ALWORTH LAW & ENGINEERING 505 CUMBERLAND ROAD TYLER, TX 75703-9324			D ADAMO, STEPHEN D	
		ART UNIT	PAPER NUMBER	3636

DATE MAILED: 07/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/749,040	BURLESON, MICHAEL ALLAN
	Examiner Stephen D'Adamo	Art Unit 3636

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 09 May 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,3,4,8-14,16 and 17 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,3,4,8 and 9 is/are rejected.
- 7) Claim(s) 10-14,16 and 17 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) All    b) Some \* c) None of:
      1. Certified copies of the priority documents have been received.
      2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
      3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date. _____.   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

### ***Claim Objections***

1. Claims 16 and 17 are objected to as being in improper form because the claims are dependent upon canceled claim 15. As understood, claims 16 and 17 should be dependent upon independent claim 14. Appropriate correction is required..

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 3, 4, 8-14, 16 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is indeterminate as to whether applicant's independent claims, each individually assessed as a whole, are drawn to an apparatus per se or to the combination of an apparatus and *a recreational vehicle including a starboard side, a port side, a frame and a seatback control circuit to which the seatback is supported*. The conclusion is reached

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for the reason that the opening recitation of the preamble in applicant's claim sets forth that the claimed invention is to "an apparatus" or *a rotatable seatback*. This opening recitation is followed by a recitation that the claimed apparatus is "*for use on a recreational vehicle*". However, further within the claims, the applicant positively claims "*the recreational vehicle*". The examiner is treating the claims on the merits of the rotatable seatback, or sub combination, as claimed in the independent claims.

Claim 9 recites the limitation "said latch mechanism" on line 7, which lacks antecedent basis.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Ware (4,313,639).

Ware discloses a motorcycle backrest comprising a seatback 10 having an upright position and a boarding position, as seen in Figures 2 and 4. The seatback also includes a rotational mounting means 46 for revolving the seatback between the upright and boarding position and a latching and quick release means 48 for retaining the seatback in an upright position. Further, once the backrest is connected to the motorcycle, the rotational mounting means is integral with the latching and quick release means. Ware also teaches of a longitudinal axis projecting from the front of the seat (facing out of the

page) to the back of the seat (facing into the page). The rotational mounting means revolves the seat about the longitudinal axis.

Regarding claim 3, the mounting means is attached to the frame of the vehicle via bolts 20.

Moreover, regarding claim 4, the mounting means is attached to the seat of the vehicle via the bolts 20 and frame 18.

Claims 1, 3, 4 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Mesinger (1,240,587).

Mesinger discloses a saddle for motorcycles comprising a seatback 27 having an upright position and a boarding position (Figure 4), rotational mounting means, including elements 6, 7 for attaching and revolving the seatback between the upright position and the boarding position about a longitudinal axis. Further, Mesinger teaches of latching and quick release means 24, 25 for retaining the seatback in an upright position. The latching and quick release means of element 8 are integral with and the rotational mounting means 6, 7.

In regards to claim 3, the rotational mounting means 6 is attached to the frame 4 of the vehicle.

Regarding claim 4, the rotational mounting means 6 is attached to the seat of the vehicle through frame member 4.

With respect to claim 9, the rotational means comprises a swivel plate 11, a swivel 19, and a swivel pin 10. The swivel is received by the swivel plate 11 and held within the

swivel plate by the swivel pin 10. The swivel freely rotates within the swivel plate providing the latch and quick release mechanism 24, 25 is not engaged.

Claims 1 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Stark et al. (5,997,088).

Stark discloses a vehicle seat comprising a backrest 2a having an upright position and a boarding position, rotational mounting means 30 for attaching and revolving the seatback between the upright and boarding positions, latching and quick release means 27 is integral with the rotational mounting means 30 for retaining the seatback in the upright position. Moreover, the latching and quick release means further comprises a latch pin 27 coupled to a quick release knob 23 and a spring 25. Wherein the spring loads the latch pin 27 such that the latch pin retains the seatback in the upright position until released by pulling and rotating the quick release knob.

*Response to Arguments*

2. Applicant's arguments filed 9 May 2005 have been fully considered but they are not persuasive.

In response to applicant's arguments, the recitation "a personal watercraft having a seat with a right side, a left side, a top side, a bottom side, a front side, and a rear having a longitudinal axis extending from the front of the seat projecting beyond the rear of the seat and located between the top side and the bottom side of the seat and further located between the right side and the left side of the seat" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of

the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone.

Applicant's arguments with respect to claims 1, 3, 4, 8 and 9 have been considered but are moot in view of the new ground(s) of rejection.

*Allowable Subject Matter*

3. Claims 10-14 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

4. Claims 16 and 17 would be allowable if rewritten to overcome the objections set forth in this Office action.

*Conclusion*

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen D'Adamo whose telephone number is 703-305-8173. The examiner can normally be reached on Monday-Thursday 6:00-3:30, 2nd Friday 6:00-2:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Pete Cuomo can be reached on 703-308-0827. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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July 20, 2005

  
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